

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 32

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

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Ex parte PAUL D. DAVIS, KELLI D. FEATHER-HENIGAN  
and KIMBERLY HINES

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Appeal No. 2001-1273  
Application No. 09/171,334

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HEARD:  
February 7, 2002

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Before WINTERS, WILLIAM F. SMITH, and GREEN Administrative Patent Judges.

WILLIAM F. SMITH, Administrative Patent Judge.

**DECISION ON APPEAL**

This is a decision on appeal under 35 U.S.C. § 134 from the final rejection of claims 1 through 8, 13, 16 through 19, 21, 26, 33 through 35, 37 through 45 and 49. Claims 9 through 12, 14, 15, 20, 22 through 25, 27 through 32, 36, 46 through 48 and 50 are pending but have been withdrawn from consideration by the examiner. At oral argument, counsel withdrew the appeal as to claims 7 and 8. Accordingly, we dismiss the appeal as to claims 7 and 8. This leaves claims 1 through 6, 13, 16 through 19, 21, 26, 33 through 35, 37 through 45 and 49 for our consideration.

### DISCUSSION

We believe the examiner rejected claims 1 through 8, 13, 16 through 19, 21, 26, 33 through 35, 37 through 45 and 49 under 35 U.S.C. § 112, second paragraph, as being indefinite in the Examiner's Answer. We say "believe" because in setting forth the rejection on pages 3-4 of the Examiner's Answer, the examiner does not state either the claims which are rejected or the statutory basis of the rejection. However, from reading the seven reasons posited by the examiner in the paragraph bridging pages 3-4 of the Answer in light of the final rejection (Paper No. 13, May 26, 2000), it is our understanding that the examiner intends all the pending claims to be rejected under 35 U.S.C. § 112, second paragraph.

The examiner has set forth seven reasons why he considers the claims to be indefinite in the paragraph bridging pages 3-4 of the Examiner's Answer as follows:

- 1) In claim 1 and all occurrences, "each total mole" is not understood and "less than x moles of azine compounds" does not refer to any concentration
- 2) Claim 6 and all occurrences appears to be contradictory where in the last line, "per mole of total azine in said solution" regarding the relative concentrations vs. amounts and what would be included under total azine.
- 3) In claim 7 line 1, "aminoaryl" lacks antecedent basis.
- 4) In claim 8 and all occurrences, "said azine compound having a hydrogen atom" is not understood regarding what azines do and do not have a hydrogen atom and what the significance of that would be.
- 5) In claim 13 lines 8-9 and all occurrences, "capable of reacting" is indefinite regarding what actually occurs.
- 6) In claim 37 and all occurrences, "poisoning azine compounds" is not understood in context and what is poisoned by what may be intended to be set forth.
- 7) In claim 49 and all occurrences, "capable of reacting with oxidized peroxidase" is unclear as to what reacts with what and under what conditions.

Upon review of the record, we summarily reverse the rejection for reasons 1 -7 to the extent these reasons apply to the claims which remain before us for consideration as the examiner provides no explanation why the questioned terms render the remaining claims indefinite.

The decision of the examiner is reversed.

**REVERSED**

Sherman D. Winters  
Administrative Patent Judge

William F. Smith  
Administrative Patent Judge

Lora M. Green  
Administrative Patent Judge

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